



7373 West Saginaw Highway, Box 30960, Lansing, Michigan 48909-8460
Phone (517) 323-7000

March 23, 2010

The Honorable Mark Meadows
Chair, House Judiciary Committee
House of Representatives
Lansing, Michigan 48909

Dear Chair Meadows:

On behalf of the members of the Michigan Farm Bureau, we are writing to express our opposition to **House Bill 5744**. This bill would overturn longstanding Michigan law and create new liabilities for landowners, farmers, owners of farm markets, U-pick operations, and others.

House Bill 5744 would, in actions based on tort or other legal theory seeking damages for personal injury, property damage or wrongful death, limit consideration of whether a condition is open and obvious only to the jury's assessment of the degree of comparative fault, and not with respect to any other issue of law or fact, including duty.

The Open and Obvious Doctrine has long been part of Michigan law, for good common sense reasons. In situations where a condition is so obvious that a person should not need to be warned about it, we should not create a new statutory duty for the landowner. Under current Michigan law, it is up to the judge and the jury to determine whether a condition is open and obvious. This makes sense—every situation is different and we cannot legislate black and white answers that will fit every situation. For farmers in particular, business often occurs out in the natural world, with changing weather, land conditions, plants and animals, and so forth. It is imperative that farmers and their guests all exercise reasonable good judgment of their own in these surroundings, including care around any open and obvious conditions that could pose a risk.

The Open and Obvious Doctrine is not inconsistent with comparative negligence, as noted in *Michigan Civil Jurisprudence, Volume 18A, Negligence, Section 67*. Under current law, the judge or jury has the flexibility to consider the comparative negligence of the parties in addition to evaluating whether a condition is open and obvious. Furthermore, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect against the risk. These principles in current Michigan law give judges and jury the flexibility to deal with each case on its own merits based on the unique circumstances involved.

On behalf of the members of the Michigan Farm Bureau, we **strongly urge you to vote "NO" on House Bill 5744**.

Thank you in advance for your attention to this matter. Please let me know if you have any questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Robert S. Anderson" followed by a horizontal flourish.

Robert S. Anderson
Legislative Counsel